

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE DE JESUS RODRIGUEZ,

Petitioner,

No. CIV S-03-0029 DFL DAD P

vs.

SAN JOAQUIN SUPERIOR COURT,
et al.,

2:05 - CV 01558 DFL DAD HC

Respondents.

ORDER

Petitioner has filed a document styled, "Application For Relief From Default And Motion For Leave To File Late Notice Of Appeal," utilizing the case file number assigned to this case while referring to file number MISC. S-02-0245 DFL DAD PS as being a related case in some manner.¹ This case was closed on May 23, 2003 after petitioner failed to file an amended habeas petition upon being granted leave to do so. The miscellaneous case, referred to by petitioner as being related to this action, was a civil rights action that was closed on April 22, 2002 after petitioner failed to submit either the filing fee or an in forma pauperis application. In petitioner's pending application, he "moves this court for an order permitting him to serve and

¹ It is not clear why petitioner makes reference to case number MISC. S-02-0245 DFL DAD PS since it was a civil rights action and petitioner apparently seeks to challenge his 1996 state court conviction.

1 file late Notice of Appeal, Writ of [H]abeas Corpus, or a certificate of appealability.” Petitioner
2 also attaches an “Amended Petition” challenging his 1996 conviction in the San Joaquin County
3 Superior Court.

4 The court finds petitioner’s application for relief from default confusing.
5 However, it appears that petitioner seeks a court ruling deeming his habeas petition to be timely
6 filed. The court will not make such a determination at this time.² Since petitioner’s “amended
7 petition” should have been filed as a new action, the court will direct the Clerk of the Court to
8 open a new habeas case, remove petitioner’s documents filed on June 28, 2005 from this case
9 file, and file them instead in the new habeas case file, using the June 28, 2005 filing date. Any
10 future documents filed in this closed case, will be disregarded. No further orders will issue in
11 this closed case.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. The Clerk of the Court is directed to open a new § 2254 habeas case for
14 petitioner naming Bill Lockyer as a respondent; the same District Judge and Magistrate Judge
15 shall be assigned to this new case; petitioner shall be sent a notice of his new case file number;
16 and the Clerk of the Court shall make appropriate adjustments in the assignment of civil cases to
17 compensate for the opening of the new habeas case to the assigned judges;

18 2. The Clerk of the Court is directed to remove documents filed by petitioner on
19 June 28, 2005, from case file number CIV S-03-0029 DFL DAD P, place them in the new habeas
20 case file, and file stamp the documents with the June 28, 2005 filing date;

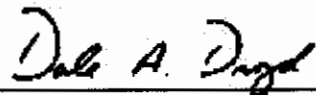
21 3. The Financial Department shall correct the records to reflect that the \$5.00
22 filing fee paid by petitioner on June 28, 2005 in this case, is designated as petitioner’s filing fee
23 for his new habeas case; and

24 /////

25 _____
26 ² Respondents may file a motion to dismiss challenging the timeliness of petitioner’s
habeas petition if they deem it appropriate to do so.

1 4. A copy of this order shall be placed in the new case opened with respect to
2 petitioner's habeas petition filed on June 28, 2005.

3 DATED: August 4, 2005.

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5 
6 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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